

## **REMARKS**

In accordance with the Examiner's request, new paragraphs have been added to the specification to describe Figs. 31 and 32.

Claims 39-41 and 43-45 remain pending and under consideration.

In the March 1, 2006, office action, a new ground of rejection has been made. Claims 39-41, and 43-45 now stand rejected as being unpatentable over Bonutti (US 6,187,023) in view of Suzuki et al. (US 4, 682,981).

Bonutti discloses a fluid operated retractor to retract tissue. The structure shown in Fig. 13 is of a pair of the retractors that are used together such that there is an inner bladder 160 and an outer bladder. Inflation of the two bladders pulls the tissue away from the joint.

First, Bonutti is completely without relevance to a fluid delivery apparatus. The contention that it would have been obvious to use Bonutti's apparatus in combination with a cannula for fluid delivery is completely without support. Nowhere is there any identification of a suggestion or motivation to provide the structure disclosed in Bonutti with a fluid delivery catheter as set forth in claim 39. For a valid obviousness rejection, there must be a suggestion from among the references themselves to make the claimed combination. The rejection is in error on this fundamental point and should be withdrawn.

Further, Bonutti is acknowledged to be without a locking mechanism. Thus, Suzuki is being relied upon for that limitation. Suzuki discloses a device having a sheath portion 2 (Fig. 2) and a dilator portion 3 (Fig. 4). The locking mechanism in Suzuki is for preventing relative rotational movement between the sheath portion 2 and the dilator portion 3. The structure to do so are grooves 9 in the sheath portion 2 (See Figs. 2 and 3) and mating ribs 12 (See Fig. 4). The grooves form a series of keyways and the ribs (splines) form keys that fit into the keyways. Furthermore, the grooves 9 are on the outer portion of the device and the ribs are on the inner portion of the device. The structure in Suzuki is not in conformance with the recitation in claim 39 and does not meet the locking mechanism limitation of claim 39.

The specific limitation in claim 39 is as follows:

a locking mechanism comprising the inwardly directed projections of the outer tubular body and the outwardly directed projections of the inner tubular member, wherein in *a first rotational position of the inner tubular member relative to the outer tubular body*, the inwardly and outwardly directed projections and the defined recesses permit the inner tubular member to longitudinally move within the lumen of the outer tubular body and, in *a second rotational position of the inner tubular member relative to the outer tubular body*, the inwardly and outwardly directed projections are caused to engage one another in an interlocking relationship to prevent longitudinal movement of the inner tubular member within the lumen of the outer tubular body

The locking mechanism of claim 39 is clearly specified to require relative rotational movement between the inner and outer tubular members so that relative longitudinal movement is prevented. Thus, Suzuki is inapposite to the recited locking mechanism. That is, whereas the structure recited in claim 39 allows relative rotational movement between the interlocking pieces into a position that prevents relative longitudinal movement, Suzuki allows relative longitudinal movement between the interlocking pieces into a position that prevents relative rotational movement.

Accordingly, combining Suzuki with Buonetti fails to result in the claimed subject matter as a whole. Necessarily, the rejection of claims 39-41, and 43-45 fails as well and should be withdrawn.

The USPTO rejected claims 39, 41, 43-45 for double patenting. Applicants will file a terminal disclaimer for the listed patent applications with serial numbers 10/606,908, 11/000,538, 11/000,539 provided the patent application becomes an issued patent and the double patenting rejection applies. With respect to U.S. Patent No. 6,613,062, Applicants respectfully disagree that the referenced claims involve double patenting. For example, the independent claims in U.S. Patent No. 6,613,062 do not expressly disclose a "locking mechanism." For at least this difference, Applicants respectfully request withdrawal of the double patenting rejection.

### **III. Conclusion**

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this Amendment, the Examiner is requested to telephone the undersigned attorney to attend to those matters.

Respectfully submitted,

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Date

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